

**MINUTES SILVER CREEK TOWNSHIP
ZONING BOARD OF APPEALS HEARING HELD ON SEPTEMBER 19, 2018**

VARIANCE REQUEST BY ARTHUR THIELE

Chairman Bruce Nevins called the Zoning Board of Appeals Hearing to order at 7:00 p.m. on Wednesday, September 19, 2018. The Pledge of Allegiance to the Flag of the United States of America was recited.

MEMBERS PRESENT: Bruce Nevins, Jean Rowe, Mike Glynn, Thom Brown, Adele Straub, Nick Barnes (New member Nick Barnes observing only)

OTHERS PRESENT: Building/Zoning Administrator Todd Herter, Recording Secretary Lindsay Krohne, four members from the public.

ABSENT: None

APPROVAL OF JULY 24, 2018 ZONING BOARD OF APPEALS MINUTES

Mike Glynn motioned to approve both Zoning Board of Appeals Public Hearing minutes from July 24, 2018. Bruce Nevins seconded. Motion passed by voice vote.

PUBLIC HEARING

Bruce Nevins read the Notice of Public Hearing, which explained the variance request:

The request of Arthur Thiele, 50264 E. Lakeshore Drive, for a 528- square foot variance from the maximum permitted 1500 square feet of permitted accessory building size and a locational variance in order to permit the construction of a 1500 square foot (30x 50ø) accessory building on unaddressed vacant property (Lot 88 of Rainbow Park) across the street from 50263 E. Lakeshore Drive under similar ownership. The property is located in the WD Waterfront District Zoning Classification. The property at 50264 E. Lakeshore Drive contains a residence and a 528 ósquare foot accessory building. An accessory building without a principal permitted use on the same parcel is not allowed under the Zoning Ordinance (See Definitions). The maximum accessory building square footage limitation is contained in Section 15.030 (B) of the Township Zoning Ordinance. Standards of review for the Zoning Board of Appeals are contained in Section 155.253 of the Township Zoning Ordinance.

BUILDING/ZONING ADMINISTRATOR COMMENT

Building/Zoning Administrator Todd Herter stated that the primary residence has an existing, attached garage that is 528 square feet, which is considered an accessory building and counts toward the 1,500 square feet maximum for accessory buildings. Todd explained that both parcels are standalone lots and meet the square footage to be by themselves. Todd stated that the proposed garage would be built across the street on the standalone lot, which would be against the ordinance. Todd added that if approved, he suggested requiring that both lots are joined.

PUBLIC COMMENT

Applicant Arthur Thiele's son, Eric Thiele, stated that he is speaking for his father. He thanked the board for the opportunity to speak. Eric explained that his parents want to move here permanently and need storage for their cars and other things. Eric stated that the lot is an odd pie-shape, and short and narrow in the back. Eric stated that the garage would be an asset to both his father and the community, and it would look good for the neighborhood.

Arthur Thiele stated that the lot has never had anything on it, and he doesn't know why anyone would build a house on it.

Bill Mayhew of 50239 E Lakeshore Drive stated that he has known the Thieles for many years, and stated that he was speaking for someone else who could not attend the hearing. Bill stated that he was relaying a question of how far the garage would be from the back/side door of the neighbor, Frank Musel's home.

Eric Thiele answered that it would be 7' from the property line, and explained that they were only planning on going longer East and West. Eric stated that it would actually be 8'

Bill Mayhew asked how high the garage would be, and Eric answered 10' as allowed. Todd Herter stated that the garage would be 10' from the concrete floor to the top plate. Eric stated that there would be no power or anything to the garage, that it was just somewhere to put cars.

Public Comment was closed at 7:18 p.m.

COMMUNICATIONS

There were no written comments received.

COMMISSION MEMBER DISCUSSION

Thom Brown stated that the request was pretty straight forward. He questioned if there had to be a primary structure before an accessory building, and Todd Herter answered yes, if it is a separated lot, which it is at this time.

Bruce Nevins questioned why the lots were not already combined. Eric answered that they had just bought the property three years ago.

Bruce asked for clarification that if they stipulated the parcels had to be combined, they would take the square footage already existing and subtract it from the 1500 total allowed. Todd Herter stated that the parcels are in continuance and considered one lot for building purposes. Todd Herter explained that there is nothing saying the building couldn't be sold later with only an accessory building on it, if the parcels were not combined. Todd added that combining the lots would make it conforming as far as that is concerned.

Todd Herter explained that the maximum square footage for an accessory building in Waterfront District is 1,500, and with the 528 existing accessory building, they could only build a 972 square foot accessory building after combining the lots without a variance.

Jean Rowe asked the Thiele's if Todd had discussed this with them prior to the hearing, and Eric answered yes. Jean questioned if there is a fee to join lots, and Todd answered that there may be an attorney fee, and stated that the Township Assessor Bill Kays does lot splits. Mike Glynn added that there may be a fee at the Register's Office.

Adele stated that they have already used up 528 square foot of the allowed 1,500, and a 30x50 garage would be 1,500 square feet. Mike Glynn explained that they were allowed 972 more without requiring a variance.

Jean Rowe thanked the Thiele's for their flag placement, in which other members agreed was helpful.

Mike Glynn referred to Section 155.030 (6): An accessory building in a residential district shall not be constructed without a permit being issued for the primary residence. If the primary residence is not constructed according to the permit, the accessory building shall be considered a nuisance per se and removed, except if it is in AR District. Mike Glynn stated that he doesn't believe they have the authority to disregard an entire section of the Zoning Ordinance. He added that it would almost mandate that the lots be joined together for purposes of an additional accessory building.

Mike Glynn stated that the side wall in Waterfront District is 10' for parcels less than one acre. Mike added that in looking around on either side, there are nice single story residential homes, and you have to look into the distance to see any standalone garages. Mike stated that it would be quite a change from what is there. He added that there are attached/detached garages, but on the same side of the road in that area, and it would really stand out from the rest of the area in general.

Mike Glynn questioned if the proposed 30x50 building included the eaves, because you couldn't extend them due to the setbacks. Eric Thiele answered yes.

Mike Glynn stated that some neighbors may like the garage there as it may give them a feeling of more privacy, whereas others may not like it.

Adele questioned if the members saw the adjacent brown garage. Mike Glynn stated he believes that garage to the south is a part of the home, and Eric Thiele agreed.

Jean Rowe stated that the neighbors received letters about the hearing, and one neighbor came and she guesses is satisfied, referring to Bill Mayhew. Bill stated that he was only attending in place of a neighbor who could not.

Jean Rowe questioned what exactly they were voting on.

Bruce Nevins stated that if they go forward, with the stipulation that the parcels are joined, they are addressing 972 square foot, not 1,500. Eric Thiele stated that they are addressing 528 square foot. Todd Herter agreed.

Mike Glynn stated that they could join the lots and build a 972 square foot accessory building without a variance and explained that they would have to join the lots regardless in order to build.

Bruce Nevins stated that they are addressing the extra footage, 528 square foot.

Mike explained that the ordinance was changed in 2015 to increase the maximum square footage of accessory buildings from 1,050 to 1,500 in Waterfront District.

Adele Straub stated that they really do not need a variance because they can build a 972 square foot building. Bruce replied that they knew that all along, and they are actually asking for a larger than 972 square foot building.

Adele stated that she understands, because if you're already using up 528 of 1,500, you just subtract that and have a lot left over.

Jean stated that they should look at the regulations.

Mike referred to Section 155.030(B) 3: The total area of all accessory buildings including garages (attached or detached) on lots less than one acre shall not exceed 1,500 square feet. Mike stated that if they granted a 1,500 square foot accessory building across the street, the total square feet will be 2,028 when the Zoning Ordinance says 1,500 is the maximum allowed in the Waterfront District.

Discussion followed on the wording of the motion. Adele Straub asked if it would be any simpler to say the Thiele's have been granted the 528 square foot variance as requested. Mike Glynn replied that the Ordinance says there is a 1,500 square foot maximum, and we would be giving them 2,028 by granting the variance. A lengthy discussion followed clarifying the requested variance.

Mike Glynn read the Standards of Review for a Non-Use Variance:

155.253 STANDARDS OF REVIEW.

(A) *Granting of non-use variances.* A non-use variance may be allowed by the Zoning Board of Appeals only in cases where there is reasonable evidence of practical difficulty in the official record of the hearing and that all of the following conditions are addressed.

- (1) The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.
- (2) The variance will not impair the intent and purpose of this chapter.
- (3) The immediate practical difficulty causing the need for the variance request was not created by any action of the applicant or predecessor.
- (4) The variance requested is the variance necessary to meet the purpose and intent of the chapter and to meet the other standards of review in this section.

(5) Would a lesser relaxation than applied for give substantial relief to the owner of the property involved and be more consistent with justice to other property owners, and whether relief can be granted in such fashion that the spirit of the chapter will be observed and public safety and welfare secured.

Mike Glynn stated that he does not see any reasonable evidence of practical difficulty. Mike suggested that a lesser relaxation than applied for would possibly give substantial relief to the owner of the property. He stated that perhaps 1,050 in addition to the existing 528 would be more reasonable. Jean Rowe and Thom Brown agreed that they did not see any practical difficulty.

Adele questioned if they were to deny the request based on the Standards of Review, if Mr. Thiele could go on with other plans.

Mike Glynn went through the Standards once again. Mike explained that it took them hours to come up with the 1500 square foot maximum.

Bruce called for a motion.

MOTION TO DENY VARIANCE REQUEST

Jean Rowe motioned to deny the variance request for a 528 square foot variance for an accessory building. Thom Brown seconded.

Roll call vote:

Yes (5): Bruce Nevins, Jean Rowe, Mike Glynn, Thom Brown, Adele Straub

No (0):

Absent (0): None

Variance denied by roll call vote. Chairman Bruce Nevins declared the variance request denied.

Mike Glynn suggested they elect a Chair for the remainder of the year. Jean Rowe nominated Bruce Nevins and suggested they rotate on an annual basis. Mike Glynn stated that they would meet in January for an organizational meeting and select officers at that time. Bruce Nevins was selected as chair for the remainder of the year by voice vote.

ADJOURNMENT

Bruce Nevins adjourned the meeting at 7:55 p.m.

Respectfully submitted,

Lindsay Krohne
Recording Secretary

Adele Straub, Secretary

To be approved at the next Zoning Board of Appeals meeting